

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of S. STOCKER, Minor.

UNPUBLISHED

April 17, 2014

No. 317757

Genesee Circuit Court

Family Division

LC No. 11-127577-NA

Before: BORRELLO, P.J., and WHITBECK and K. F. KELLY, JJ.

PER CURIAM.

Respondent father appeals as of right from an order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). Finding no errors requiring reversal, we affirm.

I. BASIC FACTS

The March 2011 initial petition sought jurisdiction over the child based on repeated domestic violence in the home. The mother entered a no contest plea and the court assumed jurisdiction over the minor child.¹ At disposition, respondent was ordered to complete domestic violence classes and have a psychological evaluation. He was also ordered to have a substance abuse evaluation and comply with recommendations, have random drug screens, and maintain suitable housing and legal income. Given the severity of the domestic violence allegations, respondent's parenting time was suspended pending his psychological evaluation or counseling.

Respondent began substance abuse therapy, completed a psychological evaluation, and began supervised visits with his child in June 2011. Respondent completed domestic violence and anger management classes, parenting classes, outpatient drug treatment, and submitted negative drug screens. Nevertheless, after a lengthy hearing, the trial court concluded that, while respondent engaged in a number of services, he did not benefit from them. The trial court terminated his parental rights and he now appeals as of right.

II. STANDARD OF REVIEW

¹ The child's older half-sibling was also part of the adjudication order, but she was ultimately placed with her father and the trial court terminated jurisdiction.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Only one statutory ground need be established to support termination of respondent's parental rights. *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009). Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights if the court also finds that termination of parental rights is in the best interests of the child. MCL 712A.19b (5). The trial court's decision is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A decision is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

III. ANALYSIS

The trial court did not clearly err in terminating respondent's parental rights. The condition that led to the adjudication was respondent's serious domestic violence. Respondent had a history of physically assaulting the mother dating back to 2009, including putting a gun to her head on two separate occasions. Respondent had also engaged in other violence by shooting up a car in March 2011, slashing the mother's tires in May 2011, and firing a gun in the home. Respondent admitted that his substance abuse contributed to his domestic violence.

Respondent completed domestic violence and anger management classes and there had been no reported incidents since 2011. Respondent also completed outpatient drug treatment in 2012, submitted some negative screens, and completed a substance abuse assessment that indicated no further treatment was necessary because he appeared motivated to maintain sobriety.

Nonetheless, there was other evidence that supported the court's determination that respondent had not actually benefited from his services. As the trial court recognized, a parent must actually "benefit from the services offered so that he or she can improve parenting skills to the point where children would no longer be at risk in the parent's custody." *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005).

The case worker testified that respondent had unresolved issues. Although there was no evidence in the record that respondent actually ever physically injured the child, testimony revealed that he once put the child in the middle of the street and drove off during an incident in 2009. Respondent had exposed the child to domestic violence. The worker felt that respondent had not benefited from services he engaged in, and she remained concerned that respondent posed a risk to his child. Respondent still showed aggression toward the worker and the foster mother. He had also recently engaged in threatening conduct toward the mother, indicating the need for additional intensive intervention and parenting education.

Respondent argues that the Department of Human Services (DHS) failed to make reasonable reunification efforts. Generally, reasonable reunification efforts must be made to reunite the parent and child unless certain aggravating circumstances exist. *Mason*, 486 Mich at 152; *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012); MCL 712A.19a(2). However, while DHS has a responsibility to expend reasonable efforts to provide services to secure

reunification, there exists a commensurate responsibility on the part of a respondent to participate in the services that are offered. *Frey*, 297 Mich App at 247.

In support of this claim, respondent first contends that his visitation was improperly limited at the start of the case. He notes that his visitation was initially suspended after his child was removed and thereafter conditioned on his involvement in services. He asserts that the court violated MCL 712A.13a(13),² which provides:

If a juvenile is removed from his or her home, the court shall permit the juvenile's parent to have frequent parenting time with the juvenile. If parenting time, even if supervised, may be harmful to the juvenile, the court shall order the child to have a psychological evaluation or counseling, or both, to determine the appropriateness and the conditions of parenting time. The court may suspend parenting time while the psychological evaluation or counseling is conducted.

The trial court was informed of respondent's serious domestic violence at the preliminary hearing, and this justified its determination that parenting time with respondent may be harmful to the child. Moreover, respondent failed to object to the trial court's procedure, and therefore the plain error standard of review applies. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). Respondent must show that his substantial rights were affected and that the error seriously affected the fairness, integrity, or public reputation of the proceedings. *Id.* Here, termination was based on respondent's failure to benefit from services, as opposed to anything related to visitation, and reversal is not warranted. The record shows that the trial court gradually increased respondent's visitation, but when the number of visits increased respondent failed to consistently attend. Respondent's visits were reduced from three times a week to just once a week due to his inconsistency. Respondent's claim fails because it is apparent that respondent failed in his responsibility to participate in services offered. *Frey*, 297 Mich App at 247.

Respondent argues that the fact that the child was not placed with his family demonstrates a lack of reunification efforts. Respondent's parents requested that the child be placed with them when the child was first removed. However, the trial court placed the child in foster care after removal because there were concerns that respondent's family would not protect the child from respondent's violence. Although it later ordered that respondent's parents be considered for placement, that did not occur because a foster care license was denied, based on the recommendation of Ennis Center for Children (Ennis). Safety concerns still existed in the grandparents' home; there were allegations that the grandfather had pulled a gun on respondent, the grandparents refused to believe that respondent was responsible for the child coming into care, and respondent saw his parents daily. Further, the grandparents made inconsistent statements, and Ennis did not believe they would support the case plan, which was for reunification with the mother. Given this evidence, the decision to reject the paternal grandparents as a placement was not indicative of a lack of reunification efforts.

² Before 2012, this language was contained in MCL 712A.13a(11). See 2012 PA 115.

We further conclude that the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests. In deciding a child's best interests, a court may consider the child's bond to his parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the suitability of alternative homes. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).

Respondent presented some evidence of positive bonding, but there was much evidence to the contrary. The evidence established that the child experienced emotional issues and tended to act out more when visitation occurred. The child did not want to visit with respondent and would have tantrums. During visits, the child seemed afraid of respondent, refused to engage with him, and would sometimes physically attack him. A bonding expert opined that there was no bond between respondent and his child. Moreover, the evidence established that the child was thriving and happy in her current placement. The foster care worker felt that termination was in the child's best interests because respondent had not benefited from his treatment plan, he would not keep her safe, and the child needed permanency.

Affirmed.

/s/ Stephen L. Borrello
/s/ William C. Whitbeck
/s/ Kirsten Frank Kelly